1922.

Department of L.R. & Sett.

OFFICE Bd. of Rev.

STATION Chepauk, Madras

Mis **No.** 232

232

10-3-1922

Dated 10-3-1922

A1114/22

To whom sent

Pages in the file

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(SUBJECT.)

Suits (S. Kanara) Mangalore Dt. Munsiff – O.S. No. 540/21

Amblamogaru Warg Claim – Defence sanctioned

R 185 [illegible] S. Kanara

Ref No.166-22-V3.

South Kanara Collector's Office
Mangalore, 26th February 1922.

From

M.R.Ry., A. Ramacha Nedungadi, Avl.,B.A.,B.L.
Collector of South Kanara

A 1114

To

The Secretary to the Board of Revenue,
Land Revenue and Settlement,
Madras.

BOARD OF REVENUE
3 MAR 1922
LAND REVENUE DEPT.
MADRAS

Sir,

Suit - 540/21- Principal District Munsiff's Court Mangalore- Narasaya Hegde Versus The Secretary of State for India and 4 others.

The suit is for recovery of plots S.Nos.35/19A, 19C,& 19D (Extent 1.22 acres) of Amblamogar village, p164 Mangalore Taluk, shown in the plan annexed to the plaint from the defendants and for an injunction restraining them from interfering with the plaintiff's possession of the same (vide copy of the plaint enclosed). b16cf

Para 59 plaint p15cf

2. The facts of the case are as follows:-

p59(L) On 29-6-14 the palintiff applied to the Tahsildar to include in his patta S.No.35/19, which was registered at settlement as unoccupied waste, ~~as~~ on the ground that it was his warg-land included within the boundaries given in his family partition deed of 1876. The Tahsildar after some enquiry passed on 8-4-15 the following order on the petition. " A private document is no satisfactory evidence to prove one's wargclaim as against the Government. The petitioner is at liberty to apply for the land on darkhast when it will be disposed of on its merits". This he did not do but he appealed against ~~the~~ this order to the Divisional Officer and the latter dismissed it. Vide Divisional Officer's order dated 22-6-15 filed in Taluk Dis file 379-D.K.R/1324 (enclosed). The plaintiff then sent a suit notice to this office on 6-12-15 threatening to sue government unless the plot was ordered to be included in his patta and it was recorded on 11-1-16 as there

DESP. 28 FEB. 1922

p207(L)

(L)

there was no proof that the plot was warg land and as the partition deed of 1876 in which it was reported to have -- been included was only a private document not binding on --- Government. On 1-8-17 one Mr. J.L.Saldanha one of the -- adjoining wargdars applied for the plot on darkhast. In the course of the enquiry into this darkhast petition the plaintiff was examined by the Shanbhogue, being one of the adjoining landholders having common kumaki right over the plot. The plaintiff reiterated his warg claim and requested that the plot might be assigned to him. As however he did not prove his wargclaim and as the plot lay - within the kumaki limits of 4 persons including the plaintiff, the Tahsildar assigned it to the kumakidars in proportion to the extent of the kadim lands held by them as shown in the margin. Against this order the plaintiff -- filed an appeal before the Divisional officer and the appeal was dismissed on 31-3-19 (Please vide -- Tahsildar's and Divisional Officer's orders filed in D.R. 113/1327 enclosed). Hence the suit.

p159 (T)

= r/w Cultivator p224 S Kana -- Manual put p

(T)

p7

S.No.	Extent.	To whom assigned.
35/19A.	0.40.	J.L.Saldanha.
19B	0.35	Narsaya Hegde (Plaintiff)
19C	0.76	Abbakke Hengsu.)
19D	0.06	~~Dsa~~ Dasa Prabhu.

p9 (T)

3. In para 3 of the plaint it is stated that the --- land in question is wargland (~~land~~) as per sale deeds of ~~18~~ 1838 and 1840, that the latter sale deed~~s~~ is one executed in favour of plaintiff's father and that the land has been in the possession of the plaintiff and his predecessors for more than 70 years. The Government Pleader who was consulted in the matter stated that unless the sale deeds and the partition deed clearly included the land as part of plaintiff's warg property, it might be difficult for the plaintiff to prove the long standing possession set up by him. (Vide copy of the Government Pleader's letter-- dated 4-2-22 enclosed). The Tahsildar was therefore -- asked to enquire and report whether the land was included in the sale deeds of 1838 and 1840 and whether it had been

p130

p7 of

3

in the possession of the plaintiff and his predecessors for over 60 years. He reports that the land is not included in the sale deed of 1838, that the plaintiff was asked to produce the sale deed of 1840 but he did not do it, and that the whole of S.No.35/19 is a vacant dry land almost devoid of even scrubjungle growth and full of --- stones and that there are no signs on the ground of any exclusive possession. (Vide Tahsildar's report dated --- 23.2.22 copy of which is enclosed). p 10c p 9c (S)

4. On 23.12.1902 the plaintiff had filed before the Settlement Officer an objection petition against the --- rough patta issued at the settlement claiming the plot -- in question as his warg property and requesting to include it in his patta, and the Settlement Officer appears to have dismissed the petition and treated the land only as -- kumaki. vide flag R in the Diary of Amblamogaru village (R)

5. The fact that the ~~land~~ plot is not included in the -- earlier sale deed of 1838 is sufficient to hold that it - is not wargland even if it be included in the subsequent sale deed of 1840 as such. The plaintiff ought to have questioned the correctness of the settlement classification long ago. His right for doing it is now barred by limitation. This is no doubt a small matter involving only 1-22 cents of land, but if we begin to concede such questionable claims so long after the settlement there is no knowing where it will lead us, as numerous claims like this may be presented latter on. On principle , therefore, I think the suit should be opposed --- and request that the defence of the suit may be sanctioned

6. As regards evidence to be adduced on behalf of Government I propose to file the documents noted in the pa *margin and also to examine the defendants 2 to 5 and the village shanbhogue to disprove the plaintiff's alleged possession, as suggested by the Government Pleader in -- his letter referred to above.

---

(1) Tahsildar's order dated 30-6-18 in D.R.Case 113/27 .

4

(2) Proceedings of the Revenue Divisional Officer, dated 31-3-19 passed in Revenue Appeal against the Tahsildar's order in D.R.113/1327 filed by the plaintiff.

(3) Extract from the register showing the service of rough pattas at Settlement.

(4) Plaintiff's objection petition dated 23-12-02 filed before the Settlement Officer against the rough patta issued.

(5) Extract from the register that the plot was registered as unoccupied dry at the Settlement.

p 6 cl

7. I submit for the Board's approval a draft of the written statement prepared by the Government Pleader and corrected by me to be filed on behalf of Government together with a statement prescribed in B.S.O.No.~~98~~ 93 and with the connected records as noted in the margin.

p 6 cl

p 5 cl.

1. Copy of the plaint.
2. Taluk Dis file 379-D.K.R./1324.
3. Taluk File D.R.Case 113/1327.
4. Copy of Government Pleader's letter dated 4.2.22.
5. Copy of Tahsildar's report Dis No. 75-D/Rev/22 dated 23-2-22
6. Objection petition of the plaintiff dated 23.12.02 filed before the Settlement Officer.
7. Diary of Amblamogar village showing the particulars ection petitions and the Settlement Officer's orders.
8. Register showing the service of rough pattas of Amblamogar village at Settlement.
9. Draft written statement.

8. The suit stands posted to 10.3.22. As the full three months' time has not been given by the court to file the written statement, I am asking the Government Pleader, Mangalore to apply for an adjournment.

Collector.

27.2.22

4(a)

IX 1—1-12

Form A.—Defence of Suits

Date of the plaint.	Date of service of the summons on the Collector.	Date of Collector's letter.	Date of hearing.	Explanation for delay where a clear fortnight is not allowed to the Board for the consideration of the case.
1	2	3		5
29-11-21.	3-1-22.	26-2-22	10-3-22	The records were called for from the Tahsildar on 7-1-22. His report was received on 28-1-22. Government Pleader Mangalore was asked on 30-1-22 to prepare and send the written statement. His report was received on 6-2-22. The Tahsildar was asked on 9-2-22 to submit a further report on certain points. The Tahsildar's report was received on 23-2-22.

South Kanara Collector's Office,
Dated 26-2-1922.

Collector.

Recd at 5 [illegible]
6-3-22

5

As
S
M1

MRL
9.III.22

A 1114/22

Suits (S. Kanara) Mangalore Dt. Munsiff. OS. No 540/21
Ambalamogaru Warg Claim. Defence Sanctioned

Re Mis 232 / 10.3.22

The Board Sanctions the defence of the Suit and approves the draft W.S.

2. The Collr is requested to Send a Copy of the plaint to be filed in this Office

Kee
8.3.22

Jo
6.3.22

To the Collector S Kanara
with clerns 1, 2. 3 6 7 & 8.

Despd 118 / 13.3.22

Note

Limitation is the strong point. The Evidence on the question of possession ~~is of ambiguous value~~ wh. the Plff. will be able to adduce does not appear much stronger than ~~the~~ the similar evidence with wh. the Govt is to rebut it. This Evidence on both sides appear weak. Nor does the ~~question~~ evidence of title wh. the Plff. can adduce, namely, the documents of 1838 & 1840 appear to help him much. The suit may be defended for the reasons given by the Collr. at the end of para 5 of his letter.

Jo
6.3.22

(Yes. The courts usually decide these cases on limitation.)

AA
6.3.22

7.3.22

MRL
9.III.22. Issue to-day

Issue as telegram at once: today is the hearing

10.3.22

In the court of the Principal District Munsiff of
Mangalore.
Original Suit No.540 of 1921.

Between

Nar~~a~~saya Hegde ... ... Plaintiff.

And.

The Secretary of State for India in Council
and others. ... ... Defendants.

*****

Writen statement of the 1st Defendant under Order VIII, Rule 1 of the Code of Civil Procedure 1908.

The first defendant begs to state as follows:-

1. Plaintiff's suit for possession of the plaint plot 35/19 is unsustainable in law.

2. This defendant denies that any portion of S.No.35/19 belongs to Plaintiff's warg No.11 or that it was in the possession of ~~the~~ plaintiff or his predecessors-in-title at any time in proprietary right for the past 70 years or more.

3. S.No.35/19 being Government land was rightly classified as assessed waste at the settlement and the same being at the absolute disposal of Government, was assigned on darkhast in D.R.No.113/1327 to plaintiff, to defendants 3 and 4 and another.

4. The plaintiff's suit is barred by limitation.

5. Plaintiff is not entitled to any ~~sort~~ of the reliefs claimed in the plaint.

~~6~~. Prays therefore that the plaintiff's suit may be dismissed with costs.

26. 2. 22.

Collector.

27/2

Copy of the Government Pleader's letter dated the 4th February 1922.

Re:- O.S.No.540/21 on the file of the Principal District Munsiff of Mangalore .

In forwarding herewith the draft of the written --- statement to be filed on behalf of the Government in the above suit, I have the honour to state that the Plaintiff in paragraph 3(a) of his plaint asserts that the plaint plot S.No.35/19 is included within the boundaries of the sale deeds dated 1838 and 1840 respectively. As copies of these sale deeds are not among the records sent to me I am not in a position to say whether the plot is actually so included. It does not appear that plaintiff produced these sale deeds at any time before the Revenue Authorities. During the whole course of the Revenue Proceedings he based his warg claim on a partition deed dated 26.10.1876. It would appear however that both from the report of the shanbhogue dated 11.11.1917 and from the order of the Revenue Divisional Officer, that the plot is included in the said --- partition deed. As however, there was no evidence or -- of any actual occupation of the plot, plaintiff was (~~ask~~) asked by the Revenue Divisional Officer to apply the land on darkhast. But, when he did apply plaintiff was given only a small portion of S.No.35/19. It is rather hard that the plaintiff whilst being given hopes of getting the land if he should apply for the land on darkhast should subsequently have been treated in the manner he was done.

2. The question of possession in the case is all important. From the records it does not appear that Government at any time exercised any acts of ownership over the suit land. On the other hand there is no evidence on the side of the plaintiff that he and his ancestors have been in enjoyment and possession of the plot for the past 70 years or more as asserted in the plaint. This

This is a matter which entirely rests on evidence to be produced in the case.

3. On the ground of limitation there is every probability of Government succeeding in this suit in as much as plaintiff failed to dispute the classification of the plot at the time of settlement when it was treated as Government assessed waste. If plaintiff disputed this classification he ought to have done it within the statutary period of six years from the date of the issue of rough pattas.

4. On the question of possession also unless ~~(the)~~ the sale deeds and the partition deed clearly include the plaint plot as part of plaintiff's warg property, it ~~(may)~~ may be difficult for the plaintiff to ~~(prove)~~ prove the long standing possession set up by him.

5. As regards ~~(the)~~ evidence to be adduced on behalf of Government it may be necessary to examine some witnesses including some of the defendants to disprove the plaintiff's alleged possession. It is necessary also to examine the shanbhogue of the village on the same point and also to prove the statement made before him by the plaintiff requesting that the plot may be granted him ~~(by the plaintiff)~~ on darkhast. The plaintiff's application for darkhast which is not among the records sent to me and the Tahsildar's order are also necessary to be filed in the case and of the Revenue Divisional Officer in appeal in the darkhast proceedings. Evidence regarding the fact of the service of the rough pattas on plaintiff or his predecessor-in-title and the date thereof will have to be adduced.

The records sent to me are herewith enclosed.

27-2

For Collector.

27/2

Copy of the Mangalore Tahsildar's report Dis No.75-D Rev. 22 dated the 23rd February 1922, to the Collector of South Kanara.

Subject:- O.S.No.540/21 on the file of the Principal Dt.Munsiff's court of Mangalore.

Plaintiff. ... Narsaya Hegde.

Defendants. ... The Secretary of State for India (~~in Council~~) and 4 others.

The plaint plots are:-

	A.C
35/19A of Amblamogar	0.40
35/19C	0.76.
35/19D	0. 6.

In D.R. ~~(34/1327)~~ 113/1327, plot 35/19A was assigned to late Mr. J.L.Saldanha, 35/19C to Abbakke and 35/19D to Dasa Prabhu on kumaki right. The land assigned to Mr. Saldanha appears to have since been purchased by 2nd defendant Chennappa Maistry along with other lands belonging to Mr. Saldanha.

2. The plaintiff claims the whole of S.No.35/19 measuring 1 acre 57 cents as appertaining to his warg No.11 of Amblamogar and bases his claim on

(1) Partition deed dated 26-10-1876 executed in his family according to which he says S.No.35/19 has been alloted to his share.

(2) The sale deed dated 9-7-1838 executed in favour of one Subbamma by Santhu alias Appu and 3 others in respect of a portion of warg No.11 of Amblamogar village, a copy of which produced by the petitioner exists in the records of D.R.567/1327 herewith submitted.

(3) Sale deed dated 21-2-1840 executed in favour of -- petitioner's father by Santappa and others in respect of a portion of the said warg No.11 of Amblamogar. This sale deed, the plaintiff has failed to produce before me up to --- this though he promised to produce it at the time of my --- local inspection on the 13th instant when he was present.

3. The sale deed of 1838 does not contain any ---

boundaries but only the description of fields covered by it. It was read ~~ober~~ over to the plaintiff at the time of local inspection and he has verbally admitted before me that it does not include S.No.35/19 though he is not willing to give any written statement. -- Hence This sale deed of 1838 does not seem to support his claim. As the plaintiff has withheld the production of the sale deed of 1840 it is not possible to state whether this deed includes or does not include S.No. 35/19.

4. In para 2 of his letter dated 4-2-1922, the Government Pleader has raised the question of the --- possession of the plaint plots. My local inspection shows that the plaint plots together with plot 35/19B, assigned to the plaintiff in D.R.113/1327 constitute ? 35/19, the whole of which is a small hillock almost ~~a~~ devoid of scrubjungle growth and full of stones. -- There are no signs on the ground of any exclusive --- possession and enjoyment of the plots. They contain the following trees:-

35/19D.-- 1 peepul tree with a portion of stone platform, the other portion of the platform being in in 36/5.

35/19A.-- 1 Jack tree about 60 years old traces of the foundation of a devil shrine and 3 ----- cashew trees.

35/19C.--4 Cashew trees, 1 dadsal tree, and 1 Honne tree.

5. 35/19A which contains an old Jack tree and --- traces of a devil shrine building having been assigned to Mr. J.L Saldanha as purchaser of the plaintiff's -- brother's share appertaining to the same warg, it is a question whether a suit lies against Government in respect of this plot which has been assigned to a successor -in-title of a portion of warg No.11 belonging to the plaintiff's family. In this connection, it may be stated that Warg No.11 is not a paimashed warg and hence it cannot be -- Surveyed. exactly located on the ground. The old A register, of

which an extract relating to this warg is herewith submitted shows that the beejavari extent shown therein is according to azmaish of fasli 1242. Hence there are no old Revenue records to support the plaintiff's warg claim.

6. In para 3 of his letter, the Government Pleader says that on the ground of limitation, there is every probability of government succeeding in this suit in as much as ~~the~~ --- plaintiff failed to dispute the classification of the plot at the time of settlement when it was treated as Government assessed waste. I find that the plaintiff did object to the classification of the plot in in his objection petition ~~dated~~ dated 23-12-1902 filed before the Settlement officer. This has been obtained from the Collector's office records and is filed in the records of this case. In this objection petition he has stated that 35/19 is a vacant dry land and has been excluded from his patta. His statement that it a vacant -- dry land is clearly an admission that it did not contain any improvement~~s~~ whatever in December 1902. It still continues to be a vacant ground.

7. As regards the partition deed of 1876 referred to above, he relies on the following boundary description --- marked A on the 12th page of the copy filed in the records.

East.- Fence and stone wall belonging to Kadri --- Saiba and Kempu Gudde (Hill containing red earth)

South.- Bund of Kadri Saiba's digpa feild.

West.- Stone planted.

North.- Kemmannakattada thota or garden.

To the east of S.No.35/19 there is a stone wall with hedge but there is no Kempu Gudde. The plaintiff has, at the time of local inspection identified the Kemmannakattada thota to be 35/16 which is a garden belonging to him. This garden touches only a small north western portion of S.No. 35/19. The southern boundary is identified to be the bettu feild in S.No.36/5 touching the south eastern corner of 35/19. The stone planted on the western side does not exist at present. The northern and eastern boundaries appear to to be defective. It is a question therefore whether this defective boundary specification,is sufficient to support the plaintiff's warg claim,.apart from the fact that the -- document which contains it is a private document and is not binding,on Government.

8. In the above circumstances I beg to solicit favour of orders as to whether I should try to effect a compromise.

9. The connected records are herewith submitted as per list.

28/2

For Collector.

27/2

13

To Secy

The following telegram is Submd for approval

Your letter 166 - dated 26th February Mangalore Dt. Munsiff
Suit (No) 520/21 Defence sanctioned. W.S. approved.

To the Collr (of) S. Kanara.

10.3.22

10.3.22

[illegible]

+ P.C
Wire Sent
US
10/3/22

Ref C.No.166-22-V3. South Kanara Collector's Office

Mangalore, 16th March 1922

From A ~~9418.~~

A 4137

M.R.Ry. A. Ramacha Nedungadi, Avl., B.A.,B.L.,
Collector of South Kanara.

To

The Secretary to the Board of Revenue,
Land Revenue and Settlement,
Madras.

BOARD OF REVENUE
23 MAR 1922
LAND REVENUE DEPT.
MADRAS

(A).

B.P.No.232, Mis. dated 10-3-22 - Suits (South Kanara) Mangalore District Munsiff's court - O.S.No.540/21 - Amblamogaru village - warg claim.

A copy of the plaint in the above suit is sent --- herewith.

A.S.

'A'

Filed with B.P. 232 / 10.3.22

For Collector.

20/3

27.3.22.

27.3.22

28.3.22

No / 17.3.22

In the Court of the Principal District Munsiff
of Mangalore. 15 O.S.No.540/1921.

Between:-

Narsaya Hegde. ... Plaintiff.

and

1. The Secretary of State for India in Council.
2. Chennappa Maistry.
3. Dasa Prabhu.
4. Abbakke Hengsu.
5. Kinhanna Mulya. ... Defendants.

Plaint under section 26, Schedule I, Order VII of Act V of 1908.

Plaintiff abovenamed begs to state as follows:-

1. Plaintiff is the son of Laxumana Hegde and resides in the town of Mangalore.

Plaintiff's address for service is as above.

2. The Secretary of State for India in Council is represented by the Collector of South Kanara, 2nd --- defendant is the son of Kantu Baidya, 3rd defendant is the son of Krishna Prabhu, 4th Defendant is the neice of Kotiar Guttu Kantappa Shetty, 5th defendant is the ---- nephew of Ammoo Moolya; Defendants 2 and 3 reside in --- Hoige Bazaar of Mangalore Town, defendant 4 resides in Belma Casba village, 5th defendant resides in Amblamogar village of Harekal Magane of Mangalore Taluk.

4 3.(a). Property described below belongs to the -- ancestors of the plaintiff as part of Mallu Rama's warg No.11 as per sale deeds dated 1838 and 1840, the latter in the name of Subba~~nna~~mma who sold it to Plaintiff's father.

(b). The said property was being enjoyed by the father of Plaintiff as above said and was in his ~~enjoyment~~ possession as portion of Mallu Rama's warg and has devolved upon plaintiff and was in his possession as --- such.

(c) During the Survey and Settlement the same

same appears to have been left from the patta lands and -- ultimately 1st defendant assigned the same in favour of defendants 2 to 4 in D.R.No.113/1327 who have since taken possession of the same.

(d) The plot having been included in the warg land and being in the possession of plaintiff and his predecessors-in-title for the last more than 70 years, 1st defendant had no right to assign the same and the assignments in ~~fa~~ favour of defendants 2 to 4 confers no valid title and is not valid and binding as against plaintiff and the 1st -- defendant or defendants have no right to interfere with ~~t~~ ~~the~~ plaintiff's possession.

(e) The 1st Defendant was given a due suit notice which was recorded.

(f) Hence the suit for possession, mesne profits and the necessary reliefs. The 5th Defendant is sued as a party to the suit as he is quarrying stones without any - right:

4. The cause of action for which arose on --- 27-1-1917 and since and on 31-3-1919 and since in Amblamogar village, within the jurisdiction of this court.

5. Plaintiff estimates the value of the reliefs at Rs.11.9.0.

6. Plaintiff therefore praysfor a decree and judgment against defendants for

(i) Possession of the property described below free from the objection of defendants. This relief is -- valued at 5 times the assessment of Rs.1-5-0. 6-9-0

(ii) Injunction restraining defendants from interfer~~e~~ing with plaintiff's possession of the property. This is valued at 5-0-0

(~~iii~~ iv) Future mesne profits at the rate of Rs.5/- per year.

11-9-

(~~ii~~ iii) Costs of suit~~s~~.

(v) such other and further reliefs as to this court may seem fit.

Here enter description of property)

For Collector

⊗ 17

ఆస్తి వివరము

[illegible]
[illegible]
[illegible] 35/19 [illegible] 2వ [illegible]
[illegible] 35/19A [illegible] 40
[illegible] 9-7-0 ల ఆస్తి, 3వ [illegible]
[illegible] 35/19D [illegible]
6 [illegible] 0-1-0 ల ఆస్తి, 4వ [illegible]
[illegible] 35/19C [illegible]
[illegible] 76 [illegible] 0-13-0 ల ఆస్తి, [illegible]
[illegible]
[illegible]
[illegible]
[illegible]

[illegible]

True copy

Mangalore
dated 29-11-21.

sd/ x x
vakil for Plff.

True copy

21-3
For Collector

21. 3. 22